

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of the City of  
Redwood Falls to Extend its Assigned  
Service Area into the Area Presently Served  
by Redwood Electric Cooperative

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDED ORDER**

The above-entitled matter came on for an evidentiary hearing before Administrative Law Judge Richard C. Luis on September 20 and 21, 2006, at the offices of the Public Utilities Commission in Saint Paul, Minnesota. The hearing record remained open after the hearing for submission of posthearing briefs. The hearing record closed on December 6, 2006, with receipt of reply briefs and a map delineating the service areas at issue in this matter.<sup>[1]</sup>

Kathleen M. Brennan and Craig S. Wosmek, Attorneys at Law, McGrann, Shea, Anderson, Carnival, Straughn & Lamb, Chartered, 800 Nicollet Mall, Suite 2600, Minneapolis, MN 55402-7035, appeared for the City of Redwood Falls (City).

Harold P. LeVander, Jr., Attorney at Law, Felhaber, Larson, Fenton & Vogt, P.A., 444 Cedar Street, Suite 2100, Saint Paul, MN 55101-2136, appeared for Redwood Electric Cooperative (Cooperative).

Stuart Mitchell, Rate Analyst, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota, appeared on behalf of the Staff of the Minnesota Public Utilities Commission (Commission or PUC).

**NOTICE**

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission ("Commission") and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule that the Commission will announce. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply (if any), and an original and 15 copies of each document should be filed with the Commission.

The Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and one is held.

### **STATEMENT OF ISSUES**

Through this proceeding, the parties have resolved all but the following issues.

- Is the Cooperative entitled to lost revenue or depreciated plant costs from the City's initiation of service to the Redwood Falls City Wastewater Treatment Ponds (Lagoons)?
- Is the Cooperative entitled to compensation for lost revenue from future customers in the Prairie Knoll Area being developed by the City?
- What is the appropriate level of compensation for lost revenue from existing customers?
- What is the appropriate level of compensation for lost revenue from future customers?

In addition to the above contested issues, the City and the Cooperative have agreed that there is no compensation required for integration of facilities and for other relevant factors. The City and the Cooperative have agreed regarding the original cost of the property serving the 19 residential customers, less depreciation. Findings on those items have been included in this Report, along with an analysis of the disputed issues.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

#### **Jurisdictional-Procedural Background**

1. On August 3, 2005, the City filed a Petition with the Commission under Minn. Stat. § 216B.44, requesting extension of the City's assigned service area to nine areas. Eight of these areas are within the municipal boundaries of the City. One of the eight areas is a new development, known as Prairie Knoll. The ninth area is the City's wastewater pond (the Lagoons), which is outside of the municipal boundaries, but within the City's service area. The eight other areas lie within the assigned service area of the Cooperative. The City and the Cooperative agreed that a contested case proceeding was appropriate to set compensation for service rights to the annexed areas.<sup>[2]</sup> The City also requested that the Commission grant it the right to serve the new customers in Prairie Knoll pending the determination of compensation in this proceeding. The Cooperative opposed the City's request to serve new points of delivery within the Prairie Knoll Addition while compensation was being determined.

2. On November 10, 2005, the Commission issued a Notice and Order for Hearing directing that a contested case hearing be convened to determine the original cost of Cooperative property being acquired by the City, any depreciation on that property, loss of revenues to the Cooperative, expenses arising from the integration, and any other factor bearing on what compensation the City should pay to the Cooperative for the adjustment of the assigned service territories. The Commission also directed that any issues regarding the Cooperative's service in areas already within the City's service area also be addressed, whether any compensation is required for serving customers in such areas, and the amount of any such compensation.<sup>[3]</sup>

3. On November 14, 2005, the Commission issued an Order granting the City's request for interim service rights to the Prairie Knoll area.<sup>[4]</sup> The grant of interim service was subject to two conditions in the event of reversion of service rights to the Cooperative. The Commission also required an escrow of \$1,500 per acre as service is extended into Prairie Knoll.<sup>[5]</sup>

### **Description of the Utilities' Service Areas**

4. The City of Redwood Falls is located along the Redwood River, in the Minnesota River valley between Granite Falls (to the northwest) and New Ulm (to the southeast). The City boundary was extended with the municipal annexation of the City of North Redwood on December 31, 1996. The City is served by a municipal airport, located in the northeastern part of the City.<sup>[6]</sup>

5. The City provides electricity to most of the area within its municipal boundary. In conjunction with the annexation of the City of North Redwood, the City purchased additional service area in the North Redwood vicinity from Northern States Power (NSP, now Xcel).<sup>[7]</sup>

6. The Cooperative provides electricity to 2,500 customers throughout its service territory.<sup>[8]</sup> That territory is almost exclusively in Redwood County. Almost all of the municipalities in the County are served by other utilities. Xcel's service area borders the Cooperative's on the northeast, and Xcel serves the City of Tracy in the southwest corner of the County. A number of other cooperatives have service areas on the Cooperative's western boundary. Brown Cooperative serves the City of Springfield in the southeast corner of the County. Alliant serves eight municipalities through the center and southern parts of the County.<sup>[9]</sup>

7. In the general vicinity of the City, the Cooperative provides electricity to its customers via a three-phase primary overhead line (3-phase line) running around the City's pre-consolidation boundary to both the east and northwest. This 3-phase line runs along the southern boundary of the former North Redwood. The 3-phase line is supplied with power from the Cooperative's Redwood substation (located several miles south of the City). The 3-phase line runs to the Lagoons, where it meets a similar line running westward to another Cooperative substation.<sup>[10]</sup>

8. The Cooperative's annual purchase of kilowatt hours (kWh) is approximately 58.5 million kWh. Of that total, the Cooperative has total system sales of just under 54 million kWh.<sup>[11]</sup>

### **Description of the Annexed Service Areas**

9. The City identified five affected areas in its initial Petition. Four of those areas are in the Cooperative's service area. The remaining area is in the service area purchased by the City from NSP. In the course of the prefiled testimony, the City altered its numbering of these areas, to reflect the nature of each area. The City described nine areas in its testimony. For clarity, both numbers are provided.

10. The Burr Oaks area (Area 1- Petition Area 4) is located in the northeastern portion of the City. Area 1 is a subdivision that has 16 urban residential customers being served by the Cooperative. The Cooperative connected seven of these customers over the period of 1997 to 2000.<sup>[12]</sup> The lots that are occupied are served by City water. Only one buildable lot remains in the subdivision, but it is not within the area served by City water or sewer service.<sup>[13]</sup>

11. The Bellig and Bidinger area (Area 2- Petition Area 2) is located in the northern part of the City near the City Lagoons (described in the next Finding).<sup>[14]</sup> Two of the Cooperative's existing rural residential customers are in Area 2.<sup>[15]</sup>

12. The City owns and operates wastewater lagoons (the Lagoons or Area 3 – Petition Area 1) that are located between one-half to three-quarters of a mile west of North Redwood. The Lagoons, currently a Cooperative customer, were built in 1996 to handle the expansion of the City's sewer system to serve the needs of North Redwood. On June 11, 1996, the Cooperative installed a three-phase cable from its existing three-phase line to provide electric service to the Lagoons. This makes the Lagoons a multi-phase general service customer of the Cooperative.<sup>[16]</sup>

13. Area 4- Petition Area 3 contains the Moer residence which is located in the southeastern part of the City.<sup>[17]</sup> This property is approximately six acres in size and contains the farm site remaining after the bulk of the land was subdivided for the Prairie Knoll subdivision.<sup>[18]</sup> This single rural residential customer is served by the Cooperative.<sup>[19]</sup>

14. The Prairie Knoll subdivision ("Prairie Knoll" or Area 5-Petition Area 3) is a 109-acre parcel in the southeastern portion of the City. The area was annexed by the City in 2001. The property owners sought to construct residences and a commercial area. In 2001, the private owners decided against development and the City purchased the property for \$55,000. The City installed water and sanitary sewer utilities in 2004 to serve the subdivision. In 2005, the City installed streets, curbs, gutters, and storm water sewer utilities in Prairie Knoll.<sup>[20]</sup> The total invested in the project by the City exceeds \$600,000. The market price of each lot is between \$24,000 and \$27,000.<sup>[21]</sup> The City has sold two of the sixteen lots that have been put on the market and homes are being built on those properties.<sup>[22]</sup> Even if the City sells all of the lots in Prairie Knoll,

the development costs will not be covered by the current selling price.<sup>[23]</sup> No Cooperative facilities have ever been installed to serve any customers in Prairie Knoll. Service to the two lots is being provided by the City, pursuant to Commission order.<sup>[24]</sup>

15. The Hilbert property (Area 6-Petition Area 3) is located in the southeastern part of the City. While large, the City noted that the property was subject to a life estate and no plans had been made to develop the property.<sup>[25]</sup> The Keil 1, 2, and 3 properties (Areas 7 and 9-Petition Area 5) are located in the northeastern part of the City. The Salmon property (Area 8-Petition Area 5) is located in the northeastern part of the City.<sup>[26]</sup> A portion of the annexed property is located on a very sharp grade.<sup>[27]</sup> The Salmon, Keil 1, and Keil 2 properties are in the approach zone of the municipal airport, which places restrictions on density and height of buildings located on these properties.<sup>[28]</sup> Keil 3 is immediately adjacent to the approach zone, but it is less limited by the applicable restrictions.<sup>[29]</sup> These properties are not served by City water or sewer.<sup>[30]</sup> These properties are not developed.

16. Outside of the Prairie Knoll area, there are no plans for further development on any of the annexed areas.<sup>[31]</sup>

### **Description of Facilities Construction in the Service Areas**

17. The Cooperative has not constructed any backbone distribution facilities in recent years near the areas to be annexed. In 1996, the Cooperative installed equipment to serve the Lagoons. The most recent construction identified by the Cooperative was the installation of distribution facilities for seven residential customers in Burr Oaks between 1997 and 2000. No facilities construction has been identified since that time.<sup>[32]</sup>

### **History of Service to the Lagoons**

18. The Cooperative maintained that it began serving the Lagoons on June 11, 1996, at the request of Curt Weber, then the City's Director of Public Utilities. At the time that the Cooperative began serving the Lagoons, that area was within the service area of NSP. In this matter, the Cooperative initially asserted that the Lagoons were located in its service area at the time the service was extended.<sup>[33]</sup> The evidence at the hearing demonstrated that employees of the Cooperative knew that the Lagoons were located in NSP's service territory. The testimony regarding the communications between the Cooperative and NSP in 1996 was as follows:

When Dennis Trom [the Cooperative's Operations Manager] was first contacted by the city about installing the service for the wastewater or the ponds, we weren't sure whose service territory it was in because Renville-Sibley, Redwood Electric, and NSP at that time all came together in that certain area. Dennis apparently contacted Renville-Sibley, and they said that it was not their service territory. He had contacted NSP -- I cannot tell you who the contact's name was at NSP -- but he contacted those people,

and they didn't have any facilities in the area. So we -- we were allowed to build into the lagoon ponds.<sup>[34]</sup>

19. There is no evidence showing that the City knew that the Lagoons were in an area that was to be subsequently acquired by the City. The City did not have the right to serve the area when electricity service was first requested. While the City has been paying the Cooperative for electricity service to the Lagoons, there is no indication that the City intended to adjust the service area boundaries further to place the Lagoons in the Cooperative's service area.

20. At the hearing, the Cooperative acknowledged that the Lagoons were in the City's service area. There has never been any filing with the Commission to formalize the Cooperative's service outside of its assigned service area. There was no agreement in writing between the Cooperative and NSP regarding the Cooperative serving a customer in NSP's service area.

21. There is only hearsay evidence, Mr. Horman's testimony, that the City had requested that the Cooperative (as opposed to NSP) provide service.<sup>[35]</sup> Horman (at that time a lineman for the Cooperative) did have personal knowledge that Weber was involved in the installation work to establish electrical service to the Lagoons. This evidence does not demonstrate that the City actively requested service from the Cooperative with any intent to bind the City regarding any future service area issues. No documents were introduced into evidence to support the assertion that the City requested that the Cooperative provide service under such terms that would have an impact on any later service area adjustment.

### **Right to Serve the Lagoons**

22. The Cooperative asserts that its agreement with NSP in 1996 supports an ongoing right to serve the Lagoons. Soon after the Cooperative began serving the Lagoons, the City and NSP began negotiation for an amendment of their two service areas. The contract between the City and NSP was finalized in 1998, reduced to writing and included significant financial compensation paid to NSP as consideration for the service territory transferred. The amendment placed the Lagoons within the City's service area. The arrangement between NSP and the Cooperative was not discussed in the amendment.<sup>[36]</sup>

23. The proposed service area amendment was submitted to the Commission to approve the change in both the service areas of the City and NSP. The Cooperative intervened in that proceeding to address customer service issues. The Cooperative did not make any claim in that proceeding that the adjustment of service areas should include adjusting the Cooperative's service area to add the Lagoons to the Cooperative's service territory.

24. The evidence does not support a conclusion that NSP entered into any formal agreement regarding a change to the service area boundary with the Cooperative. Similarly, there is insufficient evidence to find that NSP entered into a



binding contract with the Cooperative regarding service to the Lagoons. There is no evidence that the Cooperative was dealing with anyone at NSP with the authority to enter a contract that would bind that utility. The preponderance of the evidence supports an informal arrangement between the utilities that did not bind either utility. That informal arrangement does not bind a successor in interest regarding service to the Lagoons.

25. The City reviewed the service area maps when the City began discussions with the Cooperative over the changes at issue here. In that review, the City learned that the Lagoons were situated in the service area that the City obtained through NSP.<sup>[37]</sup> No evidence has been presented to show that the City had any prior knowledge that the Lagoons were in its service area.

26. The Cooperative maintained there is a practice of informal transfers and cited an agreement with Alliant Energy allowing it to serve a customer in the Cooperative's service area. In the Alliant Energy instance, the Cooperative agreed that this customer would be served by Alliant. There has been no adjustment of the service areas to formalize that agreement. The Cooperative maintains Alliant has the right to serve this customer because "We agreed to let them take it. It's their customer now."<sup>[38]</sup> The Cooperative has cited no Commission precedent to support its contention regarding informal transfers of right to serve a customer.

27. There is no agreement to adjust the service area between the Cooperative and the City. The Cooperative maintains that the City's status as a customer has some impact on the Cooperative's arrangement with NSP. The agreement to allow the Cooperative to serve the Lagoons was between the Cooperative and NSP (now Xcel Energy). There is no evidence of an agreement to alter the boundaries of the service areas of the two utilities. The Cooperative maintains that the absence of a written agreement is immaterial.<sup>[39]</sup> The Commission has disagreed with that assertion in prior matters. As the City noted in its Reply Brief, the Commission, in a 1990 decision, declared a need for written agreements when crossing service territory boundaries, stating:

The Commission finds it disturbing, however, that both utilities have been serving customers outside their assigned service territories without formal exception agreements under Minn. Stat. § 216B.40 (1988) or without receiving Commission approval. The Commission reminds both utilities that service by exception must be preceded by a written agreement and that permanent changes in assigned service areas require Commission action.<sup>[40]</sup>

28. While there may be some merit to the Cooperative's arguments in a dispute between the Cooperative and NSP, the absence of Commission approval for the Cooperative's service of the Lagoons is material. As the City points out, Minn. Stat. § 216B.39, subd. 4, explicitly requires approval by the Commission before service territories can be adjusted between utilities. Even when service territory is not being adjusted, Minn. Stat. § 216B.40 requires that:

Except as provided in sections 216B.42 and 216B.421, each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

29. The situation between the Cooperative and NSP falls squarely under the statutory requirement for a writing. In *NSP/Dakota Exchange*, the Commission explicitly ordered that “In the future both utilities shall execute written exception agreements or request Commission approval of boundary changes before serving customers outside their assigned service areas.”<sup>[41]</sup>

30. The Cooperative maintains that the equitable doctrine of laches applies to authorize the Cooperative to serve the customer and obtain compensation for that customer going to the City. Despite being involved as a party to the proceeding that would place the customer in the service area of the City, the Cooperative did not raise any issue as to its continued right to serve Lagoons. Under such circumstances, the Cooperative had an adequate remedy at law that precludes equitable relief.<sup>[42]</sup> It is the Cooperative that lacks the “clean hands” required to obtain equitable relief.<sup>[43]</sup>

31. The Cooperative maintained that the City is now estopped from asserting its right to serve a customer within the City’s own service area. The uncontradicted evidence was that the City did not discover until 2005 that the service area transfer with NSP, done in 1998, included a transfer to the City of the area in which the Lagoons were located. Service to the Lagoons by the Cooperative was initiated in 1996, over a year before the City obtained from NSP the right to serve the Lagoons (in 1998). The 2005 discovery by the City occurred approximately 9 years after service to the Lagoons by the Cooperative had been initiated.

32. There are two forms of estoppel, promissory and equitable. To establish promissory estoppel, one must show that there was a promise that another could and did reasonably rely upon which must be enforced to avoid injustice.<sup>[44]</sup> There is no evidence of a promise to support the assertion of promissory estoppel.

33. Equitable estoppel does not rely on a specific agreement. To demonstrate equitable estoppel: “the plaintiff must demonstrate that the defendant, through his language or conduct, induced the plaintiff to rely, in good faith, on this language or conduct to his injury, detriment or prejudice.”<sup>[45]</sup> As discussed in the foregoing Findings, there is no evidence to show that the City asked the Cooperative to do anything that would constitute an adjustment to each utility’s service area. The Cooperative cannot demonstrate good faith reliance on any conduct by the City, when the Cooperative did not follow the Commission’s requirements when providing service in another utility’s service area. In 1996, the City was in no position to take any action that the



Cooperative could have relied upon to its detriment. Under these circumstances, there is no basis in fact for finding the City to be estopped from serving a customer in its own service area.

34. The Cooperative asserts that had it filed a written consent by NSP, the Commission would have “routinely approved” that consent.<sup>[46]</sup> The Cooperative’s speculation raises the question as to why the Cooperative failed to note, at that time (1998), that it was serving a customer in a service area that was being transferred from NSP to the City. Since the Cooperative cannot demonstrate under what terms NSP allowed the Cooperative to serve the Lagoons, there is no basis for the Cooperative’s claims, beyond speculation. Having failed to comply with the statute at the time service was initiated, there is no basis for the Cooperative to claim that its understanding with NSP in any way binds the City.

35. Under the circumstances of the Cooperative’s provision of service, there is no ongoing right to serve the Lagoons. Since there is no ongoing right to serve that customer, there is no award of lost revenue for the City taking over service to that customer.

### **Impact on Cooperative Facilities for Serving the Lagoons**

36. The Cooperative calculated the cost of the facilities installed (transformer, underground lines, and meter) to serve the Lagoons as \$13,273.00, less depreciation of \$3,637.00, for a net value of \$9,636.00.<sup>[47]</sup> The City maintained that there is no value in the transformer to the City because the two utilities operate on different voltages. The City calculated the value (on a cost less depreciation basis) of the underground lines and meter facilities as \$8,841.00.<sup>[48]</sup> Despite this remaining value, the City asserted that no compensation was required to the Cooperative since the service was across the exclusive service area boundary.<sup>[49]</sup>

37. The City’s calculation to reach the remaining value of \$8,841.00 is the correct approach to resolving this issue. As between the City and the Cooperative, the question of compensation for the remaining value of the Cooperative’s equipment does not follow the compensation procedures laid out in Minn. Stat. § 216B.44 for annexation proceedings. The adjustment in this case is part of the action needed to correct unauthorized service across exclusive service territory boundaries. The Commission’s authority to enforce adherence to service area boundaries includes setting the terms for restoration of service to the authorized utility. Under that authority, the Commission can require the purchase of usable facilities to prevent unnecessary duplication. Requiring the City to purchase the underground lines and meter for \$8,841.00 prevents an unjust enrichment of the City at the expense of the Cooperative. The Cooperative would be entitled to remove the transformer after service to the Lagoons is initiated by the City.

### **Analysis of Service in the Annexed Areas**

38. As described above, the Cooperative’s service to the annexed areas involves 19 residential customers. The City further divided the five annexation areas set

out in its Petition into smaller parcels to describe what the particular uses and limitations on uses are present with each parcel.

39. The availability of electricity from an adjacent 3-phase line establishes that the Cooperative is serving the annexed areas within the meaning of Minn. Stat. § 216B.44. The Cooperative is entitled to compensation for loss of revenue from the existing 19 customers in the annexed areas. The parties agreed that an award of future net revenues from existing customers over a ten-year period is appropriate compensation to the Cooperative for the annexation of those customers and consistent with the Commission's prior holdings in service area adjustments.<sup>[50]</sup>

40. The City and the Cooperative have agreed on the amount of compensation required for the "original cost of the property, less depreciation" and "expenses resulting from integration of facilities," and other appropriate factors.<sup>[51]</sup> The parties agreed that the original cost less depreciation should be \$34,662, the integration compensation should be zero, and the "other appropriate factors" is zero. The parties differ on how to appropriately calculate the "loss of revenue to the utility formerly serving the area", both in identifying what customers should be included in the calculation and how the appropriate rate of compensation should be calculated.

41. The Cooperative has requested compensation for the loss of revenue from future customers over the ten-year planning period. The City maintained that no award should be made for future customers due to the lack of investment by the Cooperative in the facilities serving the area. The City maintained that there is an existing lack of capacity to serve the Cooperative's current load due to voltage drop problems.<sup>[52]</sup> The Cooperative disputed this contention, noting that voltage regulators are installed to address the issue identified by the City.<sup>[53]</sup> The Commission has concluded that general system issues do not demonstrate a lack of investment that would support denial of compensation for lost revenue from future customers.<sup>[54]</sup>

### **Prairie Knoll**

42. The Prairie Knoll subdivision is being developed by the City. The City has expended substantial amounts to develop the property and the City runs the risk of those properties not being purchased for residential or commercial construction. The City's expenditure exceeds the amount to be recovered, even if all of the lots are sold. The City maintains that under these circumstances, the Commission's holding in *Olivia I* applies, rendering the Cooperative ineligible for compensation for future customers.

43. The Cooperative maintains that the *Olivia I* no longer applies because the decision was issued over 20 years ago and there were issues regarding growth in that matter that are not present here.<sup>[55]</sup> The Cooperative asserts that serving the area by virtue of its distribution line entitles the Cooperative to compensation for future customers in Prairie Knoll.

44. The Commission recently addressed the issue of what qualifies as development that is undertaken by a municipality to meet the *Olivia I* standard. The

Commission stated that the municipality must incur the full cost of development and bear the full risk of failure. Growth rates were not mentioned as a factor.<sup>[56]</sup> The City meets both the cost of development and risk factors. Requiring the City to compensate the Cooperative for future customers would be inconsistent with the Commission's prior order in a similar situation. The City has demonstrated that the Cooperative is not entitled to compensation for future customers in the Prairie Knoll area.

### **Remaining Areas**

45. The City differentiated between areas that have customers and those that are only bare ground. As discussed in Findings 7 and 37, the Cooperative is serving those areas by virtue of its 3-phase line running in the vicinity. The Commission has clearly announced that the presence or absence of customers has no bearing on the right of the Cooperative to receive compensation for future customers in such areas, within the limitations established in the compensation determination.<sup>[57]</sup>

46. While the Cooperative has the right to compensation for lost revenue from future customers, the characteristics of the bare ground areas are important to the forecast of future growth. For this limited purpose, the City has shown that the bare ground areas are not likely to be developed at any time over the ten-year compensation period. Due to their characteristics, these areas are unlikely to have any customers over the ten-year term of compensation to the Cooperative for lost revenues. Any future growth estimates used to determine the compensation rate should not project development in these areas.

47. The only existing customers in annexed areas that are not subdivided are two customers in Area 2 (Bellig and Bidinger) and the Moer residence (Area 4- Petition Area 3). There is no evidence that any of these areas can be further subdivided to add future customers. The City's experience with the Prairie Knoll subdivision renders very unlikely any further development of that sort in the next 10 years.

48. The only area outside of Prairie Knoll that is readily available for future development is the Burr Oaks subdivision (Area 1- Petition Area 4). The Cooperative has 16 urban residential customers in this area, seven of which were connected between 1996 and 2000. The City indicated that only one lot is vacant in that subdivision. Neither sewer nor City water are extended to the available lot.<sup>[58]</sup>

### **Development Forecast**

49. The City, as part of its planning function, forecasted its expected growth through 2008. In that forecast, the City estimated that it would gain 56 households from 2003 through 2007.<sup>[59]</sup> The forecast did not specify where that growth would occur. As of February 2005, there were 40 single-family residences for sale in the City.<sup>[60]</sup> Of the four areas that the City's Community Development Plan identified for development, only one is in the annexed areas. The only identified area that is being developed is Prairie Knoll.<sup>[61]</sup> The Community Development Plan forecasted decreases of five percent in employment and approximately 30 residents per year between 2000 and 2003.<sup>[62]</sup> The

Community Development Plan noted that “few, if any, developers are willing to develop spec homes and so lots (*sic*) sales tend to be slow.”<sup>[63]</sup> In the existing economic environment, community involvement was recommended to make lots available for future development.<sup>[64]</sup>

50. The second-largest employer in Redwood Falls, Artesyn Technologies, has announced that it is closing, with all employees to be laid off by December 31, 2006. Another major employer, the local School District, was expected to lay off employees.<sup>[65]</sup> The largest employer in Redwood County, Jackpot Junction Casino, has changed its hiring policies to favor tribal members, which has resulted in job losses for some persons employed by the Casino. The City noted that both the lots sold in Prairie Knoll were purchased by persons either working for Artesyn or affiliated with Jackpot Junction.<sup>[66]</sup>

51. The City noted that its population as measured in the U.S. Census increased from 4,859 in 1990 to 5,459 in 2000, largely due to the annexation of North Redwood. But the U.S. Census Bureau predicted a decline in population, to 5,272 in 2005. This figure is similar to that forecasted by the Minnesota State Demographic Center, with the City’s population declining to 5,327 by 2005.<sup>[67]</sup>

52. The Cooperative relied on the City’s growth forecast regarding the number of new customers to be expected. The Cooperative did not assess the annexed areas for possibility of development. No independent analysis was done to assess the validity of the forecast or account for recent changes in the local employment situation. The Cooperative assumed that the forecasted growth would occur and that some of that growth would occur in the annexed areas.<sup>[68]</sup> The Cooperative used a projection of 32 future customers over the next ten years to calculate a millage rate. These future customers were projected as 17 in Prairie Knoll and 15 in all the other annexed areas.<sup>[69]</sup>

53. The Cooperative estimated that its own annual energy purchases would increase by one-tenth of one percent (0.1%) in each year between 2004 and 2023.<sup>[70]</sup> This is the same level of growth that the Cooperative experienced from 1984 through 2003. Energy sales to residential customers in the Cooperative’s service area were forecast to decrease by 0.2% per year. From 2,448 residential customers in 1979, the Cooperative was down to 2,294 residential customers in 2003.<sup>[71]</sup> The Cooperative’s forecast was to lose a further 71 customers between 2004 and 2023.<sup>[72]</sup>

### **Depreciated Plant Costs**

54. The City and the Cooperative agreed that the original cost of the Cooperative’s property, less depreciation, for the 19 existing residential customers is \$34,662.<sup>[73]</sup>

### **Lost Revenue Calculation**

55. The parties disagree on how compensation for lost revenue from existing customers should be calculated. Both utilities have used the framework for calculating

lost revenue established by the Commission in the *People's Cooperative 498* matter.<sup>[74]</sup> In general, this means calculating gross revenue from the sales to customers, deducting the purchased power expense, avoided incremental investment in new facilities, depreciation expense, consumer accounting expense, administrative and general expenses, personal property taxes, and interest expense. The Cooperative indicated that no infrastructure projects could be avoided or deferred due to the transfer of load to the City in the annexed areas.<sup>[75]</sup>

56. The City proposed a similar calculation, also using the *People's Cooperative 498* formula. For existing customers, the competing calculations of annual net loss of revenue from existing customers are as follows:

|                         | <u>Cooperative Figures</u> | <u>City Figures</u>             |
|-------------------------|----------------------------|---------------------------------|
| <b>Gross Revenue</b>    | \$34,001.00                | \$31,383.00                     |
| <b>Expenses</b>         |                            |                                 |
| Purchased Power         | \$16,710.00                | 16,379.00                       |
| Operation/Maintenance   | 1,107.00                   | 1,477.00                        |
| Customer Acct.          | 228.00                     | 246.00                          |
| Admin/General           | 228.00                     | 228.00                          |
| Depreciation            | 1,543.00                   | 2,384.00                        |
| Interest                | 1,740.00                   | 1,973.00                        |
| Property Taxes          | 1,221.00                   | 3,429.00                        |
| Total Expenses          | <hr/> \$22,777.00          | <hr/> \$26,116.00               |
| Annual Net Revenue Loss | \$11,224.00                | \$5,267.00                      |
| Energy Sales (kWh)      | 403,624                    | 403,624                         |
| Derived Millage Rate    | 27.81 mills/kWh            | 13.00 mills/kWh <sup>[76]</sup> |

57. The City noted that the Department of Commerce has urged a reasonableness test in determining the millage rate in recent service area adjustment matters. This reasonableness test proposed by the Department relied upon the results of 19 service area settlements and 2 orders over the past 15 years.<sup>[77]</sup> The City asserted that the comparison of the Cooperative's calculation to those results showed that the Cooperative's result was flawed. The Commission has unambiguously rejected

the use of such an external comparison to the results derived from the *People's Cooperative 498* formula.<sup>[78]</sup> Assessments of proposed compensation rates must be made on the figures used in the calculation.

58. The parties' calculations regarding gross revenues differed in methodology. The City calculated the lost revenue for existing customers using actual sales to those 19 customers from January through December 2005. Those sales, in kWh, were multiplied by the Cooperative's actual rate and average purchased power cost adjustment (PCA) for 2005. The City calculated the actual PCA, which was weighted by the consumption in the two rate classes of the 19 affected customers that was applied to the billings in 2005.<sup>[79]</sup> The revenue from those customers, less any applicable credits and adjusted for off-peak consumption rates, totaled \$31,383.<sup>[80]</sup>

59. The Cooperative's gross revenue calculation over the same period is \$34,001. The Cooperative calculated a different figure for the PCA. The Cooperative used the avoided purchased power cost to derive what amount was needed to "balance" the revenue from the 19 existing customers against the avoided purchased power expense.<sup>[81]</sup>

60. The Cooperative's approach treats the PCA as a figure that can be calculated on a customer-by-customer basis. This is not how the Cooperative determines the PCA for its normal business operations. The PCA, like the Cooperative's rates, is assessed by rate class across the entire system. The figure derived by the Cooperative as the PCA is not an amount that is actually charged to any customer in the Cooperative's service territory.<sup>[82]</sup>

61. In determining the avoided expenses, the City deducted \$26,116.00, which it estimated to be the amount that the Cooperative would avoid by not having to serve the customers in the annexed areas. The O&M, depreciation, and interest expense reductions were comprised of costs avoided from the facilities being purchased from the Cooperative (\$34,662) and avoided system upgrade costs of \$33,636.<sup>[83]</sup> The City identified no specific system upgrades being planned by the Cooperative that would not now be carried out due to the freed capacity arising from the acquisition of customers by the City. The avoided system upgrades figure was calculated as a percentage of the system-wide total of the Cooperative's costs for providing peak load.<sup>[84]</sup>

62. The City's capital component varies from the *People's Cooperative 498* formula.<sup>[85]</sup> The use of the system-wide estimate of avoided upgrade costs was disapproved of by the Commission in *Grand Rapids*. The Commission has long held that deductions for avoided system costs must be shown directly.<sup>[86]</sup> The City relied upon its estimate of the Cooperative's capacity to show that upgrades are currently needed.<sup>[87]</sup> The Cooperative responded that the City's estimate was technically incorrect and that the Cooperative's system has adequate capacity without upgrading. The Cooperative has shown that its current system does not require upgrading.<sup>[88]</sup> The City has not shown that the Cooperative will avoid system upgrade costs of \$33,636. The Cooperative has shown that its approach to calculating the O&M, depreciation, and interest expense reductions complies with the Commission's prior orders.



63. The Cooperative did not assert that the City's figure for purchased power should be used in the calculation, even though the City's figure is lower. The Cooperative maintained that the City had no reason for using a \$1.08 per customer amount for customer accounting.<sup>[89]</sup> The City relied on the amount actually used for this cost in the *People's Cooperative 498* (which is the same reason that both parties used \$1.00 for Administrative and General (A&G) costs).<sup>[90]</sup> The Cooperative offered no reason to vary from the \$1.08 figure.

64. The difference between the parties' estimates in the expenses for O&M, depreciation, property tax, and interest arise through the City's inclusion of an estimated \$33,636 in avoided expenses for system-wide upgrades to the Cooperative's distribution facilities.<sup>[91]</sup>

65. The City's analysis is the appropriate method of calculating the appropriate compensation for lost revenue. The Cooperative has shown that its expense calculations for O&M, depreciation, and interest are correct. The City has shown that its expense figure for customer accounting is correct. Both parties agreed to the A&G expense and the kWh sales figures. With these adjustments, the net revenue loss from existing customers demonstrated by the record in this matter is as follows:

|                         | <u>Adjusted Figures</u> |
|-------------------------|-------------------------|
| <b>Revenue</b>          | \$31,383.00             |
| <b>Expenses</b>         |                         |
| Purchased Power         | \$16,710.00             |
| Operation/Maintenance   | 1,107.00                |
| Customer Acct.          | 246.00                  |
| Admin/General           | 228.00                  |
| Depreciation            | 1,543.00                |
| Interest                | 1,740.00                |
| Property Taxes          | 1,221.00                |
| Total Expenses          | <hr/> \$22,795.00       |
| Annual Net Revenue Loss | \$8,588                 |
| Energy Sales (kWh)      | 403,624                 |
| Derived Millage Rate    | 21.28 mills/kWh         |

66. The annual net revenue loss figure of \$8,588, when divided by the consumption of 403,624 kWh, results in the millage rate of 21.28 mills/kWh.

67. The Cooperative is entitled to compensation for lost revenue for future customers in the annexed areas, except for Prairie Knoll. The Cooperative maintained that an additional 15 customers would be added in the remaining annexed areas (outside of Prairie Knoll). The uncontradicted evidence in this record is that there is one buildable lot in all of the annexed areas (excluding Prairie Knoll). The properties in the other areas are subject to significant impediments to development, most importantly the apparent lack of any market for development in the Redwood Falls vicinity. There is no evidence of any interest in building on the single available lot in the Burr Oaks subdivision. Further, the last evidence of new service in that area was the Cooperative's addition of customers in 2000.

68. With the availability of a large number of lots in the Prairie Knoll subdivision which are on City water and sewer, the impediments to development on the other properties, the absence of development in Burr Oaks since 2000, and the lack of sewer and water connections to the single available Burr Oaks lot, it is unlikely that any future customers will locate in the any of the annexed areas over the ten-year compensation period. The only growth feasible over the ten-year period is one customer, on the lot in Burr Oaks. This makes calculation of a mill rate for compensation of lost revenue for future customers very difficult, since the rate of customer growth (fill rate) affects the amount of compensation.<sup>[92]</sup> There is no evidence to calculate a fill rate for the single lot available. The current rate of sales in Prairie Knoll is strong evidence that the single lot in Burr Oaks will remain unoccupied for a significant length of time. The economic losses being borne by the City in Prairie Knoll indicate strongly that that no development will be undertaken in the other areas being annexed.

69. As the Commission stated in *Grand Rapids*, "compensation is due for lost revenues from future customers, few as they may be."<sup>[93]</sup> The solution in Grand Rapids, which also had a very low likelihood of future customers in the annexed areas, was to use the existing customer mill rate.<sup>[94]</sup> The Cooperative proposed that the same solution be adopted in this proceeding.<sup>[95]</sup> While not affirmatively accepting the proposal, the City did not reject this approach.

70. Applying the millage rate of 21.28/kWh to the actual sales over the ten-year compensation period to any new customers locating in the annexed areas outside of Prairie Knoll results in an appropriate compensation to the Cooperative for lost revenue from future customers arising from the acquisition of the annexed service areas by the City.

Based upon the foregoing findings, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Minnesota Public Utilities Commission have jurisdiction over the subject matter of this proceeding pursuant to Minn. Stat. § 14.50 and Minn. Stat. Ch. 216B.

2. Any Findings containing material that should be treated as Conclusions are adopted as Conclusions.

3. The City is entitled to serve the Lagoons, which are located within the City's exclusive service area. The Cooperative is not entitled to compensation for future revenues that would have been derived from serving the Lagoons. The City must compensate the Cooperative for the depreciated value of the facilities installed to serve the Lagoons that are compatible with the City's system requirements.

4. The four areas identified in the Petition for inclusion in the City's exclusive service territory have been annexed by the City and are now within the City's municipal boundary. These four areas do not include the Lagoons, which are already in the City's exclusive service area. By operation of Minn. Stat. § 216B.44, the City is entitled to acquire the annexed service territory, upon payment of appropriate compensation.

5. The City and Cooperative agreed that the value of the preexisting facilities in the four areas being acquired, less depreciation, is \$34,662.00. The Cooperative should receive compensation in the agreed-upon amount.

6. The City and Cooperative have agreed that there are no integration costs caused by the service territory adjustment. There is no compensation to be paid for integration costs.

7. The City and Cooperative have agreed that compensation for loss of revenue from customers in the acquired areas is appropriate over a ten-year period. Ten years is the appropriate period for loss of revenue compensation.

8. The City has demonstrated that it has incurred the entire cost and bears substantial risks in the development of the annexed Prairie Knoll area. Since the only new customers that will locate in that area are due to the City's actions as the developer, no compensation should be paid to the Cooperative for lost revenue from customers locating in that area.

9. Loss of revenue compensation for existing customers in the annexed areas outside of Prairie Knoll is appropriate based on a net revenue calculation, translated into a millage rate to be applied to customer usage over the compensation period. The City has demonstrated that its method for calculating gross revenue more accurately reflects the actual gross revenue received by the Cooperative. The Cooperative has demonstrated that its calculation of expenses, with some adjustments, more accurately

reflects the avoided costs that the Cooperative will no longer incur to serve customers in the annexed areas. Applying the gross revenues and expenses results in a mill rate of 21.28. Applying the rate of 21.28 mills/kWh to electricity sold to the 19 existing customers in the annexed areas over the ten-year compensation period is appropriate compensation to the Cooperative for the loss of revenue from existing customers.

10. The Cooperative is entitled to compensation for the loss of revenue from future customers from all of the annexed areas except for Prairie Knoll. The forecasts for development and limited availability of locations for development make establishing a mill rate for assessment against future revenue very difficult. The Cooperative recommended using the mill rate for existing customers as the measure for setting compensation for future customers. Applying the rate of 21.28 mills/kWh to electricity sold to future customers in the annexed areas (except for Prairie Knoll) for the ten-year compensation period is appropriate compensation to the Cooperative for lost revenue from future customers.

11. The Cooperative and the City have agreed that there is no compensation appropriate for other appropriate factors.

12. The record supports the proposed settlement of all the uncontested matters arrived at by the parties and it is appropriate to adopt that proposed settlement.

Based on the Findings and Conclusions, it is the Recommendation of the Administrative Law Judge to the Public Utilities Commission that it issue the following:

### **ORDER**

1. The City is entitled to serve the Lagoons since that customer is located in the City's exclusive service territory and no transfer was accomplished, either between the utilities by written agreement or order of the Commission. No award of lost revenue for future sales of energy to the serve the Lagoons is appropriate. The City must compensate the Cooperative in the amount of \$8,841.00 for the value of the compatible facilities installed to serve that customer.

2. The Cooperative is not entitled to compensation for lost revenue from customers in the Prairie Knoll area, since the development of that area is being conducted by the City, and the costs of development and risks of development are being borne by the City.

3. The Cooperative is entitled to compensation for lost revenue from existing customers in the remaining annexed service areas for a period of ten years. The compensation to be paid to Cooperative for lost revenue from both future and existing customers in the annexed service areas, excluding customers located in Prairie Knoll, is to be determined by using the mill rate of 21.28, multiplied by the kWhs of electricity that are purchased by those customers.

4. The compensation to be paid to the Cooperative for preexisting facilities being acquired in the annexed areas, less depreciation, is the amount of \$34,662.00, as

agreed to by the parties. No compensation is to be paid for integration costs or other factors, as agreed to by the parties.

5. The ongoing mill rate compensation is payable for ten years from the date of transfer.

Dated this 5<sup>th</sup> day of January, 2007.

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

Reported: Angie D. Threlkeld, R.P.R, C.R.R, and Jolene Carrow  
Shaddix & Associates (Two Volumes)

<sup>[1]</sup> The map was designated as Cooperative Ex. 33 and that number was reserved at the hearing.

<sup>[2]</sup> Cooperative Comment, at 2 (filed September 19, 2005)

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=2326903>).

<sup>[3]</sup> *ITMO the Application of the City of Redwood Falls to Extend its Assigned Service Area into the Area Presently Served by Redwood Electric Cooperative*, PUC Docket No. E-135, 298/SA-05-127 (Notice and Order for Hearing issued November 10, 2005)(*Redwood Falls*).

<sup>[4]</sup> *Redwood Falls* (Order Granting Interim Service Rights issued November 14, 2005).

<sup>[5]</sup> *Id.* at 3.

<sup>[6]</sup> City Ex. 27, Theis Direct, at 8-9; City Ex. 28.

<sup>[7]</sup> City Ex. 25.

<sup>[8]</sup> Cooperative Ex. 3, Eicher Surrebuttal, DRE-6B-R2.

<sup>[9]</sup> Cooperative Ex. 33.

<sup>[10]</sup> Cooperative Ex. 8, DRJ-1; Cooperative Ex. 1, Eicher Direct, DRE-2.

<sup>[11]</sup> Cooperative Ex. 3, Eicher Surrebuttal, DRE-6B-R2.

<sup>[12]</sup> Cooperative Ex. 1, Eicher Direct, at 38-39.

<sup>[13]</sup> Hearing Transcript, Vol. 2, at 121-123; City Ex. 29, Muetzel Rebuttal, at 5-6.

<sup>[14]</sup> Hearing Transcript, Vol. 2, at 89-90 (Thies).

<sup>[15]</sup> Hearing Transcript, Vol. 2, at 91 (Thies).

<sup>[16]</sup> Cooperative Ex. 11, Horman Direct, at 2.

<sup>[17]</sup> City Ex. 30, Berg Direct, at 5.

<sup>[18]</sup> Hearing Transcript, Vol. 2, at 81-82 (Thies).

<sup>[19]</sup> City Ex. 30, Berg Direct, at 5-6.

<sup>[20]</sup> City Ex. 27, Thies Direct, at 2-6.

<sup>[21]</sup> City Ex. 29, Muetzel Rebuttal, at 3-4; Hearing Transcript, Vol. 2, at 124-125 (Muetzel).

<sup>[22]</sup> City Ex. 27, Thies Direct, at 5-6.

<sup>[23]</sup> Hearing Transcript, Vol. 2, at 124-125 (Muetzel).

<sup>[24]</sup> *Redwood Falls*, (Order Granting Interim Service Rights issued November 14, 2005).

<sup>[25]</sup> City Ex. 29, Muetzel Rebuttal, at 5-6.

<sup>[26]</sup> Hearing Transcript, Vol. 2, at 89-90 (Thies).

<sup>[27]</sup> City Ex. 29, Muetzel Rebuttal; at 5, KM-1, at 1.

<sup>[28]</sup> City Ex. 28.

<sup>[29]</sup> City Ex. 30, Berg Direct, at 5; Hearing Transcript, Vol. 2, at 84-86 (Thies).

<sup>[30]</sup> City Ex. 29, Muetzel Direct, at 5.

<sup>[31]</sup> Hearing Transcript, Vol. 2, at 98 (Thies).

[32] Cooperative Ex. 1, Eicher Direct, at 39.

[33] Cooperative Comment, at 2 (filed September 19, 2005) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=2326903>).

[34] Hearing Transcript, Vol. 1, at 194-196 (Horman). The other contacts that were described between the Cooperative and Weber were in the nature of resolving engineering issues relating to the installation of electrical service. Hearing Transcript, Vol. 1, at 196-197 (Horman). None of these conversations as described have any bearing on service area adjustments.

[35] Hearing Transcript, Vol. 1, at 194-196.

[36] City Ex. 25.

[37] City Ex. 27, Theis Direct, at 8-10.

[38] Hearing Transcript, Vol. 2, at 35-38 (Malone).

[39] Cooperative Reply, at 4.

[40] *ITMO a Petition by Northern States Power Company for an Exchange of Service Area with Dakota Electric Association*, PUC Docket No. E-002/SA-89-1040 (Order Approving Changes in Assigned Service Areas issued June 15, 1990)(*NSP/Dakota Exchange*).

[41] *NSP/Dakota Exchange*, at 3.

[42] City Brief, at 20 (citing *Southtown Plumbing, Inc. v. Har-Ned Lumber Co., Inc.*, 493 N.W.2d 137, 140 (Minn. App. 1992)).

[43] *Marso v. Mankato Clinic, Ltd.*, 153 N.W.2d 281, 290 (Minn. 1967).

[44] *Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114, 116 (Minn. 1981).

[45] *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980).

[46] Cooperative Reply, at 4.

[47] Cooperative Ex. 2, Eicher Rebuttal, at 4.

[48] City Ex. 32, Berg Surrebuttal, at 5.

[49] City Reply, at 2-3.

[50] *ITMO the Application of the City of Olivia to Extend its Municipal Electric Service Area into the Area Served by Renville-Sibley Cooperative Power Association*, E-288, 136/SA-85-93 (Order Setting Compensation, June 27, 1986)(*Olivia I*) and (Order after Rehearing, October 1, 1986)(*Olivia II*); *ITMO the Complaint Regarding the Annexation of a Portion of the Service Territory of People's Cooperative Power Association by the City of Rochester (North Park Additions)*, E-132, 299/SA-88-270 (Order Determining Compensation, July 11, 1990)(*People's Cooperative*); *ITMO the Application of the City of Buffalo to Extend its Assigned Service Area into the Area Presently Assigned to Wright-Hennepin Cooperative Electric Association*, E-221, 148/SA-03-989 (Order Determining Compensation, April 1, 2005)(*Buffalo*); *ITMO the Application of the Grand Rapids Public Utilities Commission to Extend its Assigned Service Area into the Area Presently Served by Lake Country Power*, E-243, 106/SA-03-896 (Order Determining Compensation, September 29, 2005)(*Grand Rapids*).

[51] Minn. Stat. § 216B.44(b).

[52] City Ex. 32, Berg Surrebuttal, at 10, DAB-4.

[53] Cooperative Ex. 9, Joens Rebuttal, at 2-5.

[54] *Buffalo*, PUC Order, at 6.

[55] Cooperative Brief, at 16.

[56] *Buffalo*, PUC Order, at 7-8.

[57] *Buffalo*, PUC Order, at 5.

[58] Hearing Transcript, Vol. 2, at 121-122 (Muetzel).

[59] City Ex. 6, at 4, Graph 1.

[60] *Id.*, at 10.

[61] City Ex. 6, at 14, Attachment 2; City Ex. 28.

[62] City Ex. 6, at 3. That exhibit has two pages numbered 3. The information is on the page captioned "Demographic Trends."

[63] City Ex. 6, at 17.

[64] *Id.*

[65] City Ex. 6, at 3.

[66] City Ex. 29, Muetzel Rebuttal, at 5-6.

[67] City Ex. 29, Muetzel Rebuttal, at 6.

[68] Hearing Transcript, Vol. 1, at 117-125 (Eicher).

[69] Cooperative Ex. 1, Eicher Direct, at 41, Table 5.



- [70] City Ex. 7, at 19.
- [71] City Ex. 7, at 27.
- [72] Hearing Transcript, Vol. 1, at 126-131 (Eicher); City Ex. 7, at 28.
- [73] City Ex. 32, Berg Surrebuttal, at 3.
- [74] *ITMO the Petition by the City of Rochester for Approval of an Adjustment of its Service Territory Boundaries with People's Cooperative Services, Inc.*, PUC Docket No. E-299, 132/SA-93-498 (Order Determining Compensation issued November 30, 1995)(*People's Cooperative 498*).
- [75] Cooperative Ex. 2, Eicher Rebuttal, at 21.
- [76] Cooperative Ex. 3, Eicher Surrebuttal, at 6, Table 3 (Revision 1).
- [77] City Ex. 5.
- [78] *Grand Rapids*, PUC Order, at 7-8.
- [79] City Ex. 31, Berg Rebuttal, DAB-1 rev. 1, at 5; City Ex. 32, Berg Surrebuttal, at 7-8.
- [80] City Ex. 31, Berg Rebuttal, at 20, DAB-1 rev. 1, at 4.
- [81] Hearing Transcript, Vol. 1, at 63 (Eicher); Cooperative Exhibit 2, Eicher Rebuttal, at 13-14, Table 6.
- [82] Hearing Transcript, Vol. 1, at 63 (Eicher).
- [83] City Ex. 30, Berg Direct, at 14-15, DAB -1, at 16.
- [84] City Ex. 30, Berg Direct, at 5, DAB -1, at 16.
- [85] *ITMO the Petition by the City of Rochester for Approval of an Adjustment of its Service Territory Boundaries with People's Cooperative Services, Inc.*, PUC Docket No. E-299, 132/SA-93-498 (Order Determining Compensation issued November 30, 1995)(*People's Cooperative 498*).
- [86] *ITMO the Petition by the City of Rochester for Approval of an Adjustment of its Service Territory Boundaries with People's Cooperative Services, Inc. (Celestica Property)*, PUC Docket No. E-132,299/SA-02-496 (Order Determining Compensation issued June 19, 2003)(*Celestica*).
- [87] City Ex. 30, Berg Direct, at 15-16,
- [88] Cooperative Ex. 9, Joens Rebuttal, at 2-5.
- [89] Cooperative Brief, at 4.
- [90] City Ex. 30, Berg Direct, at 21.
- [91] City Ex. 31, Berg Rebuttal, at 16, DAB-1, at 13 and 16.
- [92] Hearing Transcript, Vol. 1, at 125, 143 (Eicher).
- [93] *Grand Rapids*, PUC Order, at 12.
- [94] *Id.*
- [95] Hearing Transcript, Vol. 1, at 15 (Cooperative opening statement).